

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CONFEDERATED TRIBES OF THE
COLVILLE RESERVATION, a
federally Recognized Indian
Tribe,

Plaintiff,

-vs-

UNITED STATES FOREST SERVICE,

Defendant.

NO. CV-08-0322-LRS

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS AND DENYING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

BEFORE THE COURT is Plaintiff's Motion for Preliminary Injunction, Ct. Rec. 2 and Defendant's Motion to Dismiss, Ct. Rec. 19. A telephonic hearing was held January 5, 2009. Tim Woolsey and Melissa Campobasso participated on behalf of the Plaintiff; Pamela DeRusha participated on behalf of Defendant. The Court having considered the oral and written argument of counsel, enters this Order to memorialize and supplement the oral rulings of the Court.

The parties agree that Plaintiff does not have a self-determination contract with the Forest Service. Neither party to this proceeding could point to statutory language showing the Indian Self-Determination and Education Assistance Act governs activities of the Forest Service

1 performed pursuant to the Forest Service Facility Realignment and
2 Enhancement Act of 2005. Accordingly,

3 **IT IS ORDERED** that:

4 1. For the reasons stated on the record, Defendant's Motion to
5 Dismiss, **Ct. Rec. 19**, is **GRANTED** pursuant CR 12. The Court finds that
6 the Indian Self-Determination and Education Assistance Act ("ISDEAA")
7 does not provide a basis to enjoin the pending sale of property by the
8 Forest Service in the town of Twisp, Washington. In the absence of a
9 violation of the ISDEAA by the Forest Service, no basis exists to
10 preclude the agency from going forward with sales activities currently
11 anticipated. Additionally, the Court finds that the United States has
12 not waived governmental immunity which would permit the Plaintiff to
13 pursue the Forest Service pursuant to the National Historic Preservation
14 Act and/or related provisions of federal law.

15 2. Plaintiff's Motion for Preliminary Injunction, **Ct. Rec. 2**, is
16 **DENIED as MOOT** given the dismissal under Rule 12.

17 **IT IS SO ORDERED.** The District Court Executive is directed to file
18 this Order and provide copies to counsel.

19 **DATED** this 7th day of January, 2009.

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21 ***s/Lonny R. Suko***

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23 LONNY R. SUKO
24 UNITED STATES DISTRICT JUDGE
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